

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 5477 of 2006****For Approval and Signature:****HONOURABLE MR.JUSTICE P.B.MAJMUDAR**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of
the judgment ?

4 Whether this case involves a substantial question of
law as to the interpretation of the constitution of
India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NARANLAL RAMLAL VISHNOI**Versus****STATE OF GUJARAT AND OTHERS**

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Appearance :

MR VIRAT G POPAT for Petitioner.

MR ND GOHIL, AGP for Respondent(s) : 1 - 4.

RULE SERVED for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR**Date : 28/06/2006****ORAL JUDGMENT**

This petition is filed by the uncle of the detinue. By filing this petition, the petitioner has challenged detention order of the detinue dated 19-1-2006, by which he is detained as a “bootlegger” under Gujarat Prevention of Anti Social Activities Act [hereinafter referred to

as PASA Act]. With the detention order, the detainee is also served with the grounds of detention. In the grounds of detention, there is a reference to a solitary case pending against the detainee. The aforesaid case is registered with Palanpur City Police Station being Gunah Register No.5521/2005 under the Bombay Prohibition Act. It is alleged that the detainee is dealing in foreign liquor.

Mr. Popat, learned advocate for the petitioner submitted that except a solitary criminal case, there is no other material available for coming to the conclusion that the detainee is a “bootlegger”. He further submitted that no statement of any independent witness is recorded by the detaining authority for coming to the conclusion that the activities of the detainee are prejudicial to public order or even tempo of public life is disturbed by his activities. It is submitted that at the most it can be said that the detainee has violated law and order and not public order. To substantiate his say, learned advocate for the petitioner has relied upon the decision of the Supreme Court in Darpan Kumar Sharma alias Dharban Kumar Sharma V. State of Tamil Nadu and Others, reported in AIR 2003 SUPREME COURT 971, wherein it is held as under in paragraph 6 :

“In the present case, the three alleged incidents to which the Commissioner of Police has referred to, are thefts arising under Section 379, IPC and, therefore, there is only a solitary instance wherein the detenu is alleged to have robbed in a public place one Kumar. Therefore, there is no material on record to show that the reach and potentiality of the single incident of robbery was so great as to disturb the even tempo or normal life of the community in the locality or disturb general peace and tranquility or create a sense of alarm and insecurity in the locality. Though in the grounds of detention the detaining authority had stated that by committing this offence in public the detenu created a sense of alarm, scare and a feeling of insecurity in the minds of the public of the area and thereby acted in a manner prejudicial to the

maintenance of public order which affected even tempo of life of the community, but citation of these words in the order of detention is more in the nature of a ritual rather than with any significance to the content of the matter. Thus, a solitary instance of robbery as mentioned in the grounds of detention is not relevant for sustaining the order of detention for the purpose of preventing the petitioner from acting in a manner prejudicial to the maintenance of public order. This ground is enough to quash the order of detention made by the respondents.”

Learned advocate for the petitioner further submitted that at the relevant time, the detenu was in judicial custody and subsequently he has been released on bail by this Court on condition that the detenu shall not leave the State of Gujarat till the criminal case pending against him is over. He further submitted that in view of the aforesaid condition imposed by this Court, the detenu is not likely to repeat the aforesaid offence.

Mr.N.D.Gohil, learned AGP, as per the instructions received by him from the Home Department, submitted that he is not in a position to say whether the detenu was involved in prohibition cases in the past also. Learned AGP is also not in a position to substantiate his say that the activities of the detenu are prejudicial to public health or that he has violated public order.

It is required to be noted that a large quantity foreign liquor was found from the possession of the detenu, which is brought into the State from Rajasthan border. Therefore, the State Government should find out how such large quantity of liquor is brought into the State and unless there is high vigil at the check post at the borders which connects Gujarat to Rajasthan, Maharashtra and Madhya Pradesh, this activity is not going to stop. In the present case, it seems that the officer at the check post has not taken care and such a large quantity of liquor is

brought into the State, therefore, the State Government may hold appropriate inquiry in this matter.

However, it is not in dispute that except a solitary criminal case, there is neither any statement of independent witnesses nor any document is available on record to suggest that the activities of the detainee are prejudicial to public health or that by the said activities, the even tempo of life is disturbed. The offence registered against the detainee is under the Bombay Prohibition Act. In that view of the matter, at the most it can be said that the detainee has violated law and order, and it cannot be said that the detainee has violated public order.

In the result, the petition is allowed. Order of detention dated 19-1-2006 is quashed and set aside. Detenu – Shri Naranlal Ramlal Vishnoi is ordered to be released forthwith unless his presence is required in connection with any other case. Rule is made absolute with no order as to costs.

Copy of this order may be sent to the Secretary - Home Department, Director General of Police as well as to the Prohibition Department of State of Gujarat.

(P.B.MAJMUDAR, J.)

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